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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9014 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHASHIKANTBHAI BHUPATBHAI JOSHI

Versus

DISTIRCT DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 9014 of 1997

MR PH PATHAK for Petitioner No. 1

M/S PATEL ADVOCATES for Respondent No. 1-2

MR HS MUNSHAW for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 21/12/2004

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution, the petitioner, in effect, challenged the

order dated 1.12.1997 (Annexure-C to the petition) by which he was informed that the benefits of higher pay and allowances which were granted to him were to be cancelled and he was to be reverted to the original place. The benefits that were granted earlier appears to have been granted by order dated 20.6.1990 according to which the petitioner, who was serving as a peon on daily wage basis since 1.11.1981, was to be granted fixed pay of Rs.750/= and dearness allowance prevailing from time to time w.e.f. 1.10.1988. The wages so calculated were, however, to be paid on daily wage basis by dividing the monthly remuneration by the number of working days.

2. The withdrawal of benefits by the impugned order was challenged mainly on the grounds that the grant of benefits by earlier order dated 20.6.1990 was pursuant to a resolution dated 17.10.1988 of the State Government and it was appropriately applied in the case of the petitioner. Secondly, the benefits once granted and continued for more than seven years could not have been unilaterally withdrawn without an opportunity of being heard being granted to the petitioner.

3. Learned counsel for the respondent Mr HS Munshaw, relying upon the affidavit of in-charge District Agricultural Officer, submitted that the petitioner was employed without following any recruitment procedure and was continued as a daily wager due to availability of the work. That the Local Fund Auditors audited the accounts of Bhavnagar District Panchayat relating to the year 1990-91 and reported that the petitioner was wrongly given the benefits of the Government Resolution dated 17.10.1988. That the said resolution was not applicable to the case of the petitioner since he was not employed on the maintenance work of any roads and buildings. Therefore, in view of the instructions issued to the District Development Officer, the benefits extended under the said resolution were withdrawn and it was ordered to recover all the benefits enjoyed by the petitioner for 7 to 8 years.

4. The case of the petitioner is directly covered by the judgment of the Supreme Court in Divisional Superintendent, Eastern Railway, Dinapur & Ors. vs. LN Kashri, AIR 1974 SC 1889 wherein it is succinctly held that once the pay scale was fixed and confirmed, the employer could not reduce the scale without giving any opportunity to the employee to be heard. It is also held by the Supreme Court in HL Trehan & Ors. vs. Union of India, 1989 (1) SCC 764 that there can be no deprivation or curtailment of any existing right, advantage or

benefit enjoyed by a government servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a government servant will offend against the provisions of Article 14.

5. In the facts of the present case, admittedly, the petitioner has enjoyed the benefit of grant of higher pay scale and allowances and after more than seven years thereof suddenly without notice or opportunity of being heard and only on the basis of objection of the auditors, the pay was sought to be drastically reduced by the impugned order. The impugned order is, therefore, liable to be quashed and is hereby set aside. It shall, however, be open to the respondents to take appropriate action after observing the principles of natural justice and affording to the petitioner an opportunity of being heard.

5. The petition is accordingly allowed and Rule is made absolute with no order as to costs.

(D.H. WAGHELA,J.)
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